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9 HELEN McABEE

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 In Re:

14 BERNADETTE CATTANEO,  
15 Debtor.

Case No. 16-52233

**SECURED CREDITOR HELEN  
McABEE'S TRIAL BRIEF**

Chapter 7

Date: September 18, 2019  
Time: 9:00 a.m.  
Courtroom.: 3020  
Judge: Hon. M. Elaine Hammond

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## I. INTRODUCTION

Debtor Berdnatte Francine Cattaneo (“Debtor”) has filed two (2) motions to avoid the judgment liens of Secured Creditor Helen McAbee (“McAbee”) on two (2) properties in Hollister, California (“Hollister Properties”): 841 Calais Drive, Hollister, CA 95023 (“Calais Property”), and 2720 Arlington Road, Hollister, CA 95023 (“Arlington Property”).

The Court set an evidentiary hearing for September 18, 2019 to determine the value of the Calais Property and the Arlington Property as of the filing of the petition on August 3, 2016.

## II. PROCEDURAL HISTORY

### A. JANUARY 2017: DEBTOR FAILS TO FILE ANY MOTION TO AVOID THE McABEE LIENS PRIOR TO OBTAINING A DISCHARGE

On August 3, 2016 Debtor filed Chapter 7. The discharge was entered on January 13, 2017. At no time during the pendency of Debtor’s bankruptcy did Debtor seek to avoid McAbee’s liens on the Hollister properties. McAbee’s liens were created by the recording of abstracts of judgment in San Benito County on May 27, 2011, and June 24, 2013.

### B. DECEMBER 2018: DEBTOR OBTAINS PERMISSION TO REOPEN THE BANKRUPTCY TO ASSERT A CLAIM AGAINST A PROPERTY IN CALAVERAS COUNTY

In December 2018, Debtor moved to reopen her bankruptcy in order to assert an ownership interest in property owned by her ex-husband in the City of Copperopolis, Calaveras County. The motion to reopen was granted for this purpose.

Thus, Debtor’s current motions to avoid the McAbee Liens on the Hollister Properties exceed the scope of the request to reopen the bankruptcy.

## III. CURRENT MOTIONS TO AVOID MCABEE LIENS

On March 4, 2019, the Debtor filed motions arguing that based upon the Debtor’s personal opinions of the values, there is insufficient equity in the Hollister Properties to secure all of the balance of McAbee’s judgment lien (“McAbee Lien”), and therefore a portion of the McAbee Liens must be avoided. However, the Debtor submitted no evidence to support the Debtor’s personal opinions of value, or the balances owed on the senior liens.

1 As shown by the evidence submitted by McAbee in opposition to the motions, including  
2 appraisals of the Hollister Properties, the Debtor substantially understated the values, and  
3 overstated the lien balances. As a result, the actual equity which secures the McAbee Lien is  
4 substantially greater than the Debtor contends.

5 **A. NO SUPPORTING EVIDENCE OF VALUES ATTACHED TO THE**  
6 **MOTIONS**

7 In her motions, Debtor opined that the values of the properties as of the date when the  
8 petition was filed on August 3, 2016 were only as follows: Calais: \$410,000.00; and Arlington:  
9 \$700,000. Debtor did not submit any appraisals, any broker opinions of value, or any other  
10 evidence of value other than the Debtor's unsupported opinion. (See Docket Number 32, 33, 35  
11 and 36.) Debtor was a real estate salesperson licensed by the Department of Real Estate for 30  
12 years, yet did not bother to attach copies of any comparable sales data to her motions.

13 **B. APPRAISALS SHOW THE CALAIS PROPERTY WORTH \$520,000 AND**  
14 **ARLINGTON WORTH \$875,000**

15 In contrast, McAbee obtained and filed with the Court on April 4, 2019 as part of  
16 McAbee's oppositions retrospective appraisals by licensed appraiser Jerry Cosio based on site  
17 inspections he performed on March 28, 2019 which determined that the values as of the petition  
18 filing date were \$520,000.00 for Calais and \$875,000 for Arlington. (See Docket Number 47,  
19 and 54, and McAbee Trial Exh. A and B.) Mr. Cosio grew up in Hollister, has been an appraiser  
20 for 31 years, and has appraised hundreds of homes in Hollister.

21 On April 9, 2019, Debtor filed a reply, but once again failed to submit any evidence to  
22 support her opinions of value.

23 At the hearing on April 18, 2019, the Court continued this matter to June 13, 2019 for a  
24 trial setting conference.

25 **C. MAY 2019: SUBSEQUENT APPRAISALS FROM THE DEBTOR**

26 In response to the appraisals filed by McAbee, on May 20, 2019 Debtor forwarded two  
27 appraisals for the Hollister properties signed by Kristin Jacobson on May 20, 2019 based on site  
28 inspections performed on April 29, 2019, determining the value of the Calais Property to be  
\$448,000.00 and the Arlington Property to be \$757,000.00.

1 Although Ms. Jacobsen's values are higher than the values opined by Debtor, McAbee  
2 contends that Ms. Jacobsen's values are still understated because her comparable sales and  
3 methodology were inferior and flawed when compared to Mr. Cosio's appraisals.

4 **D. JULY 2019: DEPOSITIONS OF THE APPRAISERS**

5 On July 1, 2019, the depositions of the appraisers Jerry Cosio and Kristin Jacobson were  
6 taken by counsel for the opposing parties respectively.

7 **E. AUGUST 2019: DEPOSITION OF DEBTOR SUBJECT TO OBJECTIONS**

8 After the appraisers' depositions, on July 15, 2019, Debtor's counsel gave notice that  
9 Debtor intended to testify at the trial on September 18, 2019 regarding repairs done between the  
10 effective valuation date of August 3, 2016 and the date of inspections by the appraisers and  
11 offered Debtor for deposition.

12 On July 25, 2019, McAbee's counsel disagreed that such testimony would be admissible,  
13 and reserved all objections to such testimony at trial, and that any deposition would be without  
14 waiving any objections. Subsequently, and subject to all objections, the deposition of Debtor  
15 went forward on August 7, 2019. The Debtor testified on topics which are not relevant or  
16 admissible at trial. McAbee continues to reserve the right to object to any such testimony at trial.

17 **IV. CONCLUSION**

18 The evidence will show that the appraisals obtained by the Debtor failed to correctly  
19 describe the subject properties, used inferior comparable sales, and made improper adjustments,  
20 as compared to the appraisals by Mr. Cosio. Therefore, the Debtor's appraisals are not credible,  
21 and should not be relied upon by the Court. Accordingly, the Court should adopt the values  
22 determined in Mr. Cosio's appraisals.

23 Dated: September 11, 2019

ROSSI, HAMERSLOUGH, REISCHL & CHUCK

24  
25 BY: /s/ Richard B. Gullen  
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